



COPYRIGHT OFFICE

DURING FISCAL 2000, the Copyright Office² advised Congress on national and international issues, created and maintained a public record of copyright registrations and recorded documents, and administered statutory licenses and Copyright Arbitration Royalty Panels (CARPs). The office also emphasized the achievement of greater operational efficiency by initiating the re-engineering of business processes for registration and recordation. Progress was made in developing an automated registration, recordation, and deposit system. The Copyright Office addressed issues relating to copyright law and the digital age, and staff specialists offered technical, legal, and educational assistance in the international arena.

During the year, the Copyright Office received 588,498 claims to copyright covering more than 800,000 works; it registered 515,612. Some 18,894 documents covering hundreds of thousands of titles were recorded, and the online public record grew with the cataloging of an additional 542,397 registrations. The Copyright Office forwarded 751,944 copies of works, with a net worth of \$32,308,047, to the Library for its collections and exchange programs. The material included 217,986 pieces that were valued at \$6,049,682 and that were received from publishers under the mandatory deposit provisions of the copyright law.

2. This chapter is excerpted from a fuller report that the Register of Copyrights sends annually to the U.S. Congress.

Richard Anderson, Copyright Office (right), helps attorney John Jennison with applications for U.S. copyright registration for *Harry Potter and the Goblet of Fire*, the latest volume in the popular series of children's books by author J. K. Rowling. (Photo by Lisa Whittle)



The Copyright Office responded to 383,513 requests from the public for copyright information, including more than 11,900 e-mail requests. The office also processed 18,087 filings from cable operators, satellite carriers, and manufacturers or importers of digital audio recording devices and media, and it processed claims to the various royalty pools. The Licensing Division collected \$183 million in royalty fees (almost 88 percent received through electronic funds transfers) and distributed royalties totaling \$367,824,476.

The Copyright Office's Web site played a key role in disseminating information with 9.4 million hits during the year, an increase of 67 percent over the previous year. The Web site provided digital access to the *Copyright Law of the United States of America and Related Laws* contained in Title 17 of the *United States Code*, studies prepared for Congress, and new or revised regulations. The Copyright Office enhanced its Web site to allow Internet submission of comments about a Digital Millennium Copyright Act (DMCA) rulemaking and about access to audio and text transcripts of public hearings concerning the rulemaking. The Copyright Office published forty-one issues of the electronic publication *NewsNet*, which has 4,317 subscribers, a 17 percent increase over the previous year. *NewsNet* issues periodic e-mail messages to alert subscribers to upcoming hearings, deadlines for comments, new and proposed regulations, new publications, and other copyright-related topics.

IMPROVEMENTS IN THE REGISTRATION AND RECORDATION PROCESS

During fiscal 2000, the Copyright Office initiated plans to align its people, business processes, and technology with strategies to achieve organizational and operational efficiency for registration and recordation. Business process re-engineering will ensure the timely issuance of certificates for copyright owners and the availability of up-to-date records of registered claims and recorded documents.

Through competitive bidding, PricewaterhouseCoopers LLP (PwC) was selected to prepare a project plan, a baseline of existing operations, an analysis of current workflow, a set of alternative plans for re-engineering of business processes, and an implementation plan for the business processes that the Copyright Office chooses. In addition, the office hired a project manager to collaborate with PwC as a technical expert and to coordinate the implementation of changes with managers, staff members, and labor organizations.

Another initiative that helps streamline internal registration processes is the Copyright Office Electronic Registration, Recordation, and Deposit System (CORDS). CORDS improves efficiency, throughput time, and internal security, and it will provide the Library of Congress with new copyrighted works for its digital collections.

During the year, the Copyright Office successfully tested and implemented CORDS's system-to-system communications with its largest copyright remitter, Bell and Howell Information and Learning Corporation (formerly UMI) for electronic receipt and processing of claims for digital dissertations. In addition, the Copyright Office processed music claims using a standard file format (MP3), which was established by the Motion Picture Experts Group, as the deposit. These claims are submitted by the Harry Fox Agency, acting as agent for member companies of the National Music Publishers Association.

To facilitate receipt of larger digital objects through CORDS in the future, the Copyright Office converted to an Ethernet network operating at 100 million bits per second. The office took steps to convert CORDS database processing to the Oracle Relational Database Management System, which is compatible with the underlying software of the Library's integrated library system.

DIGITAL MILLENNIUM COPYRIGHT ACT

Congress's enactment in 1998 of the Digital Millennium Copyright Act (Public Law 106-304) amended Title 17 of the *United States Code* so it could address the challenges of the digital age. During the year, the Copyright Office

disseminated information and participated in numerous educational programs that focused on digital technology as it relates to copyright law. As mandated by the DMCA, the Copyright Office developed and implemented regulations and conducted studies for Congress.

Anticircumvention Rulemaking. Much of the legal activity of the Copyright Office focused on a rulemaking mandated by the DMCA, the law that implemented the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty. Those treaties require that countries provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that copyright owners use to restrict acts that they have not authorized and that are not permitted by copyright law.

In the DMCA, Congress prohibited circumvention of access control technologies used by or on behalf of copyright owners to protect their works. However, Congress modified the prohibition to ensure that the public will have continued ability to engage in noninfringing uses of copyrighted works (e.g., fair use and performances of copyrighted works by instructors in face-to-face teaching situations).

The law provides that the Librarian of Congress may determine that particular classes of works are exempt for a specified period of time from the prohibition. Exemptions last for three years (e.g., from October 28, 2000, until October 28, 2003).

The DMCA directs the Copyright Office to conduct the rulemaking proceeding and to recommend to the Librarian which, if any, such classes exist. Before making a recommendation, the Register of Copyrights is directed to consult with the assistant secretary of commerce for communications and information, who is responsible for the National Telecommunications and Information Administration (NTIA).

The Copyright Office began its efforts in November 1999, following resolution in the Intellectual Property and Communications Reform Act of 1999 of the issue of the type of rulemaking to be conducted by the Copyright Office. It published a notice of inquiry seeking written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers, and the general public. In all, 235 comments and 129 reply comments were received. The Copyright Office also held three days of hearings in Washington, D.C., in April and two days of hearings in May at Stanford University Law School in Palo Alto, California. Thirty-four individuals, who represented fifty separate organizations and busi-



The Copyright Office holds a public hearing on a provision of the Digital Millennium Copyright Act. In addition to Register of Copyrights Marybeth Peters (center), the Copyright Office panel is composed of (left to right) Rob Kasunic, Charlotte Douglass, David Carson, and Rachel Goslins. (Photo by Lisa Whittle)

nesses, testified. Additionally, twenty-eight posthearing comments were received.

From July through September, the Copyright Office reviewed and analyzed the entire record and consulted with NTIA. The result was a recommendation to exempt two categories of works: (1) compilations of lists of Web sites blocked by filtering software applications, and (2) literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage, or obsolescence.³

Many other proposed classes of works were considered but failed either because they were not true classes of works or because there was no evidence of the likelihood of substantial harm in the next three years. Many of the comments and considerable testimony focused on copy controls or licensing restrictions rather than on access controls.

Studies Required by the DMCA. The Copyright Office and NTIA were tasked with studying the effects of section 1201(g) of the DMCA on encryption research. That section created very limited exceptions to the anticircumvention prohibition for encryption research and was aimed at research that targeted flaws and vulnerabilities in cryptographic systems for controlling access to copyrighted works. Comments from the public were solicited. Not one person identified a current, discernible impact on encryption research and on the development of encryption technology. Every concern expressed was prospective and speculative. Consequently, the joint report issued in May 2000 concluded that it was premature to draw conclusions or to suggest any legislative changes.

The Copyright Office and NTIA are required to examine the effects of the DMCA and the development of electronic commerce on the operation of sec-

3. The Librarian accepted the recommendation, and the rulemaking was published in the *Federal Register* on October 27, 2000.

tions 109 and 117 of the copyright law (Title 17, *United States Code*), as well as the relationship between existing and emerging technology and the operation of those sections. Section 109 permits the owner of a particular copy to sell or otherwise dispose of that copy without the authority of the copyright owner. Commonly known as the “first sale doctrine,” it is this section that permits lending of books by libraries, as well as the sale of used books. Section 117 permits the owner of a copy of a computer program to make a copy or adaptation of the program for archival purposes or as an essential step in using the program. Public comment was sought, and a public hearing was scheduled for November 2000.

LEGISLATION AND OTHER LEGAL ACTIVITY

The Copyright Office continued to provide expert assistance to Congress on important copyright-related issues, giving policy and technical advice as well as testifying on legislation.

During the year, the Register testified at three separate hearings held by the House Judiciary Subcommittee on Courts and Intellectual Property. Those hearings covered oversight of the Copyright Office, sound recordings as works made for hire, retransmission of broadcast signals on the Internet, and lack of copyright liability for infringements by states because of the Eleventh Amendment to the Constitution. The Register also testified before Senator Kerrey’s Web-based Education Commission on “The Promise of the Internet to Empower Higher Education Learners.” The Register’s testimony focused on recommendations for legislative changes included in the Copyright Office’s 1999 study on “Copyright and Digital Distance Education.”

The Copyright Office continued to assist the Justice Department in its preparation of briefs defending government action and its filing of *amicus curiae* briefs. Through the U.S. Office of the Solicitor General, the Copyright Office was successful in urging the Supreme Court to vacate an appellate court’s decision in *Rachel v. Education Management Corporation* concerning a claim in a musical composition registered by the Copyright Office and to remand the case to the lower court for further consideration in light of clarifying guidance provided by the office and published in the *Federal Register* on July 5, 2000.

The Copyright Office assisted in defending the constitutionality of legislation that extended the term of copyright protection by twenty years before the D.C. Circuit Court of Appeals (*Eldred v. Reno*) and in the drafting of the amicus brief in *A&M Records, Inc. v. Napster* in the Ninth Circuit Court of Appeals.

The Copyright Office managed five CARP proceedings. Three of the five proceedings involved setting rates and terms for various compulsory licenses. The other two dealt with the distribution of royalty fees collected under the Audio Home Recording Act of 1992 and under section 111 of Title 17, the cable compulsory license.

INTERNATIONAL ACTIVITIES

The Copyright Office continued to work cooperatively with the executive branch on international matters—most often with the U.S. Trade Representative (USTR), the Patent and Trademark Office, and the State Department.

The primary activity on the multilateral front is an effort to seek international protection for audiovisual performers. Work on a new treaty has continued for more than three years. Agreement was reached to hold a diplomatic conference in Geneva, Switzerland, in December 2000.

The Copyright Office represented the United States in the World Trade Organization (WTO), working closely with USTR to defend section 110(5) of U.S. law against a challenge by the European Union (EU) that this exception for the public performance of copyrighted works in small businesses violated U.S. treaty obligations—the Berne Convention and the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Agreement of the WTO). The briefs and oral arguments were partially successful—subsection (a) was found to comply with U.S. treaty obligations, but the new subsection (b) was deemed to violate them. The United States has been asked to change its law.

The Policy and International Affairs staff participated in negotiating the intellectual property provisions of a Free Trade Agreement with the representatives of the Kingdom of Jordan. That agreement was signed by the president on October 24, 2000. Copyright Office staff members also actively participated in many bilateral negotiations, for example, those held in Mexico, Paraguay, the People's Republic of China, Bulgaria, the Bahamas, and Switzerland. The staff met almost weekly with foreign officials and visitors who were interested in learning about the U.S. copyright system and exchanging information about topics of mutual concern.

The Copyright Office participated in many symposia and conferences sponsored by the WIPO, the U.S. Information Service (USIS), and the U.S. Agency for International Development (AID). At a WIPO workshop for Arab Countries held in Abu Dhabi, United Arab Emirates, the assistant chief of the examining division made presentations on managing a modern Copyright Office. The Register made presentations on the challenge of new technology and the enforcement provisions of TRIPS at a WIPO symposium for Asia and



Frank Evina (*right*), Copyright Office staff member and *Wizard of Oz* exhibition curator, unpacks costumes borrowed for the display, with assistance from (*left to right*) Margaret Brown, Irene Chambers, and Martha Hopkins, Interpretive Programs Office. The exhibition marked the centennial of the copyright registration of this popular work by L. Frank Baum. (*Photo by Christina Tyler Wenks*)

Pacific Countries held in New Delhi, India. An attorney on the Policy and International Affairs staff made similar presentations at WIPO programs held for Indian officials in Hyderabad and Calcutta, and the Register participated in the WIPO-IP Australia Regional Symposium held in Sydney, Australia.

In November 1999, the Copyright Office hosted worldwide participants at the <Indecs> Conference, "Names, Numbers, and Networks: Metadata, Intellectual Property, and E-Commerce: The Way Ahead." As an international collaborative project, <Indecs> seeks to accomplish the global exchange of information about electronic information, and it works in digital form to facilitate electronic commerce.